

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

PEDRO GARCIA,

Plaintiff,

v.

C/O DAVIS, *et al.*,

Defendants.

Case No. 3:20-cv-0071-MMD-CLB

SCREENING ORDER

Plaintiff, who is incarcerated in the custody of the Nevada Department of Corrections (“NDOC”), has filed an application to proceed in forma pauperis (ECF No. 1), and a civil rights complaint pursuant to 42 U.S.C. § 1983 (ECF No. 1-1). He has also filed a motion to withdraw his motion to amend first complaint (ECF No. 10), a motion to screen the original complaint (ECF No. 9), and a motion to request status of screening (ECF No. 13).

Because the Court previously granted the motion to amend complaint (see ECF No. 4), the motion to withdraw will be denied as moot. The Court will also deny the motion to screen and the motion for status of screening as moot. The matter of the filing fee will be temporarily deferred. The Court now screens Plaintiff’s civil rights complaint under 28 U.S.C. § 1915A.

I. SCREENING STANDARD

Federal courts must conduct a preliminary screening in any case in which an incarcerated person seeks redress from a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). In its review, the Court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. See *id.* §§ 1915A(b)(1), (2). *Pro se* pleadings, however, must

1 be liberally construed. See *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir.
2 1990). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
3 elements: (1) the violation of a right secured by the Constitution or laws of the United
4 States; and (2) that the alleged violation was committed by a person acting under color
5 of state law. See *West v. Atkins*, 487 U.S. 42, 48 (1988).

6 In addition to the screening requirements under § 1915A, under the Prison
7 Litigation Reform Act ("PLRA"), a federal court must dismiss an incarcerated person's
8 claim if "the allegation of poverty is untrue" or if the action "is frivolous or malicious, fails
9 to state a claim on which relief may be granted, or seeks monetary relief against a
10 defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2). Dismissal of a
11 complaint for failure to state a claim upon which relief can be granted is provided for in
12 Federal Rule of Civil Procedure 12(b)(6), and the Court applies the same standard under
13 § 1915 when reviewing the adequacy of a complaint or an amended complaint. When a
14 court dismisses a complaint under § 1915(e), the plaintiff should be given leave to amend
15 the complaint with directions as to curing its deficiencies, unless it is clear from the face
16 of the complaint that the deficiencies could not be cured by amendment. See *Cato v.*
17 *United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

18 Review under Rule 12(b)(6) is essentially a ruling on a question of law. See
19 *Chappel v. Lab. Corp. of Am.*, 232 F.3d 719, 723 (9th Cir. 2000). Dismissal for failure to
20 state a claim is proper only if it is clear that the plaintiff cannot prove any set of facts in
21 support of the claim that would entitle him or her to relief. See *Morley v. Walker*, 175 F.3d
22 756, 759 (9th Cir. 1999). In making this determination, the Court takes as true all
23 allegations of material fact stated in the complaint, and the Court construes them in the
24 light most favorable to the plaintiff. See *Warshaw v. Xoma Corp.*, 74 F.3d 955, 957 (9th
25 Cir. 1996). Allegations of a *pro se* complainant are held to less stringent standards than
26 formal pleadings drafted by lawyers. See *Hughes v. Rowe*, 449 U.S. 5, 9 (1980). While
27 the standard under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff
28 must provide more than mere labels and conclusions. See *Bell Atl. Corp. v. Twombly*,

1 550 U.S. 544, 555 (2007). A formulaic recitation of the elements of a cause of action is
 2 insufficient. *See id.*

3 Additionally, a reviewing court should “begin by identifying pleadings [allegations]
 4 that, because they are no more than mere conclusions, are not entitled to the assumption
 5 of truth.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). “While legal conclusions can provide
 6 the framework of a complaint, they must be supported with factual allegations.” *Id.* “When
 7 there are well-pleaded factual allegations, a court should assume their veracity and then
 8 determine whether they plausibly give rise to an entitlement to relief.” *Id.* “Determining
 9 whether a complaint states a plausible claim for relief . . . [is] a context-specific task that
 10 requires the reviewing court to draw on its judicial experience and common sense.” *Id.*

11 Finally, all or part of a complaint filed by an incarcerated person may be dismissed
 12 *sua sponte* if that person’s claims lack an arguable basis either in law or in fact. This
 13 includes claims based on legal conclusions that are untenable (e.g., claims against
 14 defendants who are immune from suit or claims of infringement of a legal interest which
 15 clearly does not exist), as well as claims based on fanciful factual allegations (e.g.,
 16 fantastic or delusional scenarios). *See Neitzke v. Williams*, 490 U.S. 319, 327-28 (1989);
 17 *see also McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991).

18 **II. SCREENING OF COMPLAINT**

19 In his original complaint (“Complaint”), Plaintiff sues multiple Defendants for events
 20 that took place while Plaintiff was incarcerated at High Desert State Prison (“HDSP”).
 21 (ECF No. 1-1 at 1.) Plaintiff sues Defendants Jane Doe #1¹ (sick call nurse at HDSP),
 22 C/O Davis (correctional officer at HDSP), Jhon Doe #1 (dentist at HDSP), C/O Hunter
 23 (correctional officer at HDSP), C/O Nunez (correctional officer at HDSP), Sgt. Thomas
 24 (sergeant correctional officer at HDSP), Lt. Jhon Doe #2 (lieutenant correctional officer at
 25

26 ¹Although the use of “Doe” to identify a defendant is not favored, flexibility is
 27 allowed in some cases where the identity of the parties will not be known prior to filing a
 28 complaint but can subsequently be determined through discovery. *See Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980). If the true identity of any of the Doe Defendant(s) comes to light during discovery, Plaintiff may move to substitute the true names of Doe Defendant(s) to assert claims against the Doe Defendant(s) at that time.

1 HDSP), and Jane Doe #2 (dental assistant at HDSP). (*Id.* at 2-4.) Plaintiff brings one
2 count² and seeks monetary relief. (*Id.* at 1, 12.)

3 Plaintiff alleges the following. On July 26, 2019, Plaintiff informed Jane Doe #1, the
4 sick call nurse, that he had an infected tooth, bleeding gums, a swollen jaw, and was
5 unable to eat or sleep. (*Id.* at 5.) Jane Doe #1 responded that Plaintiff would not receive
6 immediate medical treatment, and to instead submit a medical request for treatment. (*Id.*)
7 On Plaintiff's request, Jane Doe #1 gave him a medical kite, which Plaintiff completed
8 and returned to her. (*Id.*)

9 On July 29, 2019, Plaintiff received a response to his medical kite, indicating that
10 he would be notified of the date of his appointment. (*Id.*) Plaintiff went to work and
11 informed Davis, a correctional officer, that he had an infected tooth, bleeding gums, and
12 a swollen jaw. (*Id.*) Davis responded that there was nothing he could do, and that Plaintiff
13 would need to wait on medical. (*Id.*)

14 On August 13, 2019, Plaintiff was seen by Jhon Doe #1, the dentist at HDSP. (*Id.*
15 at 6.) X-rays were taken of Plaintiff's teeth. (*Id.*) Jhon Doe #1 determined that Plaintiff's
16 tooth was infected and required extraction. (*Id.*) Jhon Doe #1 stated he would not remove
17 the tooth on that date, and that an appointment would be set. (*Id.*) Jhon Doe #1 was aware
18 that Plaintiff was in extreme pain. (*Id.*)

19 Plaintiff filed an informal grievance on August 30, 2019. (*Id.* at 8.)

20 On September 2, 2019, Plaintiff informed Hunter, a correctional officer, that he had
21 an infected tooth, his gums were bleeding, his jaw was swollen, that this prevented him
22 from eating and sleeping, and that he was in severe pain. (*Id.* at 6.) Hunter instructed
23

24 ²The Court recognizes that Plaintiff has stated the allegations of his Complaint on
25 five pages of the Court's civil rights complaint form. Each of these pages of the form is
26 captioned at the top, respectively, as Count 1, Count 2, Count 3, Count 4, and Count 5.
27 Consistent with the form, Plaintiff has also recited at the top of each page that Defendants
28 were deliberately indifferent to Plaintiff's serious medical needs in violation of the Eighth
Amendment. In reviewing these pages, however, it is apparent that Plaintiff has not
alleged a distinct count on each page. Rather, Plaintiff has chronologically alleged, across
all five pages, specific events related to his efforts to obtain medical treatment for his tooth
and the respective defendant for each event. Accordingly, the Court will treat Plaintiff's
Complaint as alleging a single count with individual claims against each defendant.

1 Plaintiff to talk to medical and did not ensure that Plaintiff received medical treatment.
2 (*Id.*)

3 On September 9, 2019, Plaintiff again saw Jane Doe #1. (*Id.*) He again informed
4 her that the tooth was infected and required extraction, that he was not able to eat or
5 sleep, and that the pain was a “9 out of 10.” (*Id.*) Jane Doe #1 responded, “Stop crying
6 and wait on medical.” (*Id.*)

7 On September 30, 2019, Plaintiff informed Nunez, a correctional officer, that he
8 needed immediate medical attention because of his infected tooth and that his pain was
9 “10 out of 10.” (*Id.*) Nunez responded by sticking his finger in his own mouth, showing
10 Plaintiff the place where his molar was missing, stating it was pulled in the Philippines,
11 and that Plaintiff was going through nothing. (*Id.*) Plaintiff then went to his cell and
12 extracted his own tooth. (*Id.* at 7.) Plaintiff returned to Nunez and showed him where he
13 had pulled his tooth. (*Id.*) Plaintiff stated to Nunez that he thought a piece of the tooth
14 might still be there. (*Id.*) Nunez responded that he did not care, he was not going to call
15 medical, and instructed Plaintiff to return to his cell. (*Id.*)

16 Plaintiff requested an emergency grievance and submitted it immediately. (*Id.*)
17 Sergeant Thomas responded that Plaintiff had been scheduled for an appointment and
18 would be seen at that time. (*Id.*)

19 After pulling his tooth, Plaintiff submitted an inmate request asking for pain
20 medications and antibiotics. (*Id.* at 8.)

21 On October 8, 2019, Plaintiff was seen by Jane Doe #2. (*Id.* at 9.) When Plaintiff
22 stated his name, Jane Doe #2 referred to him as the cry baby. (*Id.*) Jane Doe #2 claimed
23 Plaintiff was supposed to have been seen on August 20, 2019. (*Id.*) Jane Doe #2 required
24 Plaintiff to sign a release from liability for pulling his own tooth before she would treat him.
25 (*Id.*) Plaintiff refused to sign the form. (*Id.*)

26 Plaintiff called his wife and informed her of his issues. (*Id.* at 8.) Lieutenant Jhon
27 Doe #2 came to Plaintiff’s cell and asked who kept calling about Plaintiff’s medical issues.
28 (*Id.*) Jhon Doe #2 made remarks to Plaintiff indicating a mutual hatred, that he did not

1 care who called, and that Plaintiff would not be seen by medical until his appointment.
2 (*Id.*)

3 On November 14, 2019, Plaintiff filed a first level grievance and has not received
4 a response. (*Id.* at 9.) On December 28, 2019, Plaintiff filed a second level grievance and
5 has not received a response. (*Id.*)

6 Based on these allegations, Plaintiff alleges that Defendants were deliberately
7 indifferent to his serious medical needs. (*Id.* at 3.) The Court liberally construes the
8 Complaint as bringing a claim against each defendant for that defendant's failure to obtain
9 or provide medical treatment for Plaintiff's tooth. The Court will address the claim against
10 each defendant in turn.

11 **A. Eighth Amendment: Medical Treatment**

12 The Eighth Amendment prohibits the imposition of cruel and unusual punishment
13 and "embodies 'broad and idealistic concepts of dignity, civilized standards, humanity,
14 and decency.'" *Estelle v. Gamble*, 429 U.S. 97, 102 (1976). A prison official violates the
15 Eighth Amendment when he acts with "deliberate indifference" to the serious medical
16 needs of an inmate. *Farmer v. Brennan*, 511 U.S. 825, 828 (1994). "To establish an Eighth
17 Amendment violation, a plaintiff must satisfy both an objective standard—that the
18 deprivation was serious enough to constitute cruel and unusual punishment—and a
19 subjective standard—deliberate indifference." *Snow v. McDaniel*, 681 F.3d 978, 985 (9th
20 Cir. 2012).

21 To establish the first prong, "the plaintiff must show a serious medical need by
22 demonstrating that failure to treat a prisoner's condition could result in further significant
23 injury or the unnecessary and wanton infliction of pain." *Jett v. Penner*, 439 F.3d 1091,
24 1096 (9th Cir. 2006) (internal quotations omitted). To satisfy the deliberate indifference
25 prong, a plaintiff must show "(a) a purposeful act or failure to respond to a prisoner's pain
26 or possible medical need and (b) harm caused by the indifference." *Id.* "Indifference may
27 appear when prison officials deny, delay or intentionally interfere with medical treatment,
28 or it may be shown by the way in which prison physicians provide medical care." *Id.*

(internal quotations omitted). When a prisoner alleges that delay of medical treatment evinces deliberate indifference, the prisoner must show that the delay led to further injury. *See Shapley v. Nevada Bd. of State Prison Comm'rs*, 766 F.2d 404, 407 (9th Cir. 1985) (holding that “mere delay of surgery, without more, is insufficient to state a claim of deliberate medical indifference”). A prison official’s deference to a medical provider’s assessment of a plaintiff’s medical needs is not deliberate indifference. *See Peralta v. Dillard*, 744 F.3d 1076, 1086 (9th Cir. 2014).

1. Jane Doe #1

Plaintiff has not alleged a colorable claim that Jane Doe #1 was deliberately indifferent to a serious medical need in violation of the Eighth Amendment. Plaintiff’s allegation that he had an infected tooth, bleeding gums, and a swollen jaw, permits a plausible inference that he had a serious medical need. Plaintiff’s allegation that he informed Jane Doe #1 of his condition permits a plausible inference that she had knowledge of that need. Plaintiff has not alleged facts that Jane Doe #1 purposefully failed to respond to his medical need but has alleged that she delayed treatment. He has alleged that she responded by informing him he would not receive immediate medical treatment, and to instead submit a medical request for treatment. The allegation permits a plausible inference that Jane Doe #1 delayed treatment. Plaintiff has alleged that Jane Doe #1 provided this information on July 26, 2019, and that he was notified of his appointment on July 29, 2019. He has also alleged that he was seen by a dentist on August 13, 2019. Plaintiff has not alleged facts permitting an inference that the delay in treatment through August 13, 2019, led to further injury. The Court will dismiss the claim against Jane Doe #1 without prejudice.

2. Davis

Plaintiff has alleged facts showing he cannot state a colorable claim that Davis was deliberately indifferent to a serious medical need in violation of the Eighth Amendment. Plaintiff’s allegation that he had an infected tooth, bleeding gums, and a swollen jaw, permits a plausible inference that he had a serious medical need. Plaintiff’s allegation that

1 he informed Davis of his condition permits a plausible inference that Davis had knowledge
2 of that need. Plaintiff has not alleged facts that Davis purposefully acted or failed to
3 respond to his medical need. Instead, Plaintiff has alleged that Davis was a correctional
4 officer. As Plaintiff alleged that Davis affirmatively responded to Plaintiff by deferring to
5 the prison's medical providers regarding treatment for Plaintiff's tooth, the Court will
6 dismiss the claim against Davis with prejudice as amendment would be futile.

7 **3. Jhon Doe #1**

8 Plaintiff has alleged a colorable claim that Jhon Doe #1 was deliberately indifferent
9 to a serious medical need in violation of the Eighth Amendment. Plaintiff's allegation that
10 he had an infected tooth, bleeding gums, and a swollen jaw, permits a plausible inference
11 that he had a serious medical need. Plaintiff's allegation that he informed Jhon Doe #1 of
12 his condition permits a plausible inference that he had knowledge of that need. Plaintiff
13 has not alleged facts that Jhon Doe #1 purposefully acted or failed to respond to his
14 medical need. Rather, he has alleged that on August 13, 2019, Jhon Doe #1 took X-rays,
15 determined that Plaintiff's tooth was infected, and required extraction. Plaintiff has alleged
16 that Jhon Doe #1 delayed treatment as Jhon Doe #1 informed Plaintiff he would not
17 extract the tooth but would set an appointment for that procedure. Plaintiff has alleged
18 facts permitting a plausible inference that the delay led to further injury. Plaintiff has
19 alleged that on September 30, 2019, he pulled his own tooth because of the severity of
20 the pain. The Court will permit this claim to proceed against Jhon Doe #1 when Plaintiff
21 learns his identity.

22 **4. Hunter**

23 Plaintiff has alleged facts showing he cannot state a colorable claim that Hunter
24 was deliberately indifferent to a serious medical need in violation of the Eighth
25 Amendment. Plaintiff's allegation that he had an infected tooth, bleeding gums, and a
26 swollen jaw, permits a plausible inference that he had a serious medical need. Plaintiff's
27 allegation that he informed Hunter on September 2, 2019, of his condition permits a
28 plausible inference that Hunter had knowledge of that need. Plaintiff has not alleged facts

1 that Hunter purposefully acted or failed to respond to his medical need. Instead, Plaintiff
2 has alleged that Hunter was a correctional officer who instructed Plaintiff to talk to
3 medical. As Plaintiff has alleged that Hunter affirmatively responded to Plaintiff and
4 deferred to the prison's medical providers regarding treatment for Plaintiff's tooth, the
5 Court will dismiss the claim against Hunter with prejudice as amendment would be futile.

6 **5. Nunez**

7 Plaintiff has alleged a colorable claim that Nunez was deliberately indifferent to a
8 serious medical need in violation of the Eighth Amendment. Plaintiff's allegation that he
9 had an infected tooth, bleeding gums, and a swollen jaw, permits a plausible inference
10 that he had a serious medical need. Plaintiff's allegation that he informed Nunez on
11 September 30, 2019, of his condition permits a plausible inference that Nunez had
12 knowledge of that need. Plaintiff has alleged that Nunez purposefully acted or failed to
13 respond to his medical need. Plaintiff has alleged that Nunez, a correctional officer,
14 responded that Plaintiff was going through nothing. Plaintiff has alleged that, after he
15 pulled his own tooth and had informed Nunez he thought a piece of the tooth remained in
16 place, Nunez responded he was not going to call medical and instructed Plaintiff to return
17 to his cell. The Court will permit the claim to proceed against Nunez.

18 **6. Sergeant Thomas**

19 Plaintiff has alleged facts showing he cannot state a colorable claim that Sergeant
20 Thomas was deliberately indifferent to a serious medical need in violation of the Eighth
21 Amendment. Plaintiff's allegation that he had an infected tooth, bleeding gums, and that
22 he had pulled his own tooth, perhaps incompletely, permits a plausible inference that he
23 had a serious medical need. Plaintiff's allegation that he filed an emergency grievance on
24 September 2, 2019, to which Sergeant Thomas responded, permits a plausible inference
25 that Sergeant Thomas had knowledge of that need. Plaintiff has not alleged facts that
26 Sergeant Thomas purposefully acted or failed to respond to his medical need. Instead,
27 Plaintiff has alleged that Sergeant Thomas was a correctional officer who affirmatively
28 responded to Plaintiff and informed him that he had been scheduled for an appointment.

1 As Plaintiff has alleged that Sergeant Thomas deferred to the prison's medical providers
2 regarding treatment for Plaintiff's tooth, the Court will dismiss the claim against Sergeant
3 Thomas with prejudice as amendment would be futile.

4 **7. Jane Doe #2**

5 Plaintiff has alleged a colorable claim that Jane Doe #2 was deliberately indifferent
6 to a serious medical need in violation of the Eighth Amendment. Plaintiff's allegation that
7 he had pulled his own tooth because it was infected, and he was in severe pain permits
8 a plausible inference that he had a serious medical need. Plaintiff's allegation that he was
9 seen by Jane Doe #2, a dental assistant, on October 8, 2019, permits a plausible
10 inference that she had knowledge of that need. Plaintiff has alleged that Jane Doe #2
11 purposefully acted or failed to respond to his medical need. Plaintiff has alleged that Jane
12 Doe #2 told Plaintiff he was a cry baby. He has alleged that, prior to providing treatment,
13 Jane Doe #2 required Plaintiff to first sign a release from liability for pulling his own tooth
14 before she would treat him. Plaintiff alleges he refused to sign the form, raising a plausible
15 inference that Jane Doe #2 denied treatment to Plaintiff. The Court will permit the claim
16 to proceed against Jane Doe #2 when Plaintiff learns her identity.

17 **8. Lieutenant Jhon Doe #2**

18 Plaintiff has alleged facts showing he cannot state a colorable claim that Lieutenant
19 Jhon Doe #2 was deliberately indifferent to a serious medical need in violation of the
20 Eighth Amendment. Plaintiff's allegation that he had an infected tooth, bleeding gums,
21 and a swollen jaw, permits a plausible inference that he had a serious medical need.
22 Plaintiff's allegation that, at some point in time, Lieutenant Jhon Doe #2 came to his cell
23 and asked who kept calling about Plaintiff's medical issues permits a plausible inference
24 that Lieutenant Jhon Doe #2 had knowledge of that need. Plaintiff has not alleged facts
25 that Lieutenant Jhon Doe #2 acted or failed to respond to his medical need. Instead,
26 Plaintiff has alleged that Lieutenant Jhon Doe #2 was a correctional officer who instructed
27 Plaintiff he would be seen by medical at his appointment. As Plaintiff has alleged that
28 Lieutenant Jhon Doe #2 affirmatively responded to his medical need and deferred to the

1 prison's medical providers regarding treatment for Plaintiff's tooth, the Court will dismiss
2 the claim against Lieutenant Jhon Doe #2 with prejudice as amendment would be futile.

3 **III. CONCLUSION**

4 It is therefore ordered that a decision on the application to proceed in forma
5 pauperis (ECF No. 1) is deferred.

6 It is further ordered that Plaintiff's Motion to Withdraw Motion to Amend Complaint
7 (ECF No. 10) is denied as moot.

8 It is further ordered that Plaintiff's Motion to Continue Screening (ECF No. 9) and
9 Motion to Request Status of Screening (ECF No. 13) are denied as moot.

10 The Clerk of Court is directed to file the Complaint (ECF No. 1-1) and send Plaintiff
11 a courtesy copy.

12 It is further ordered that Count 1, alleging Eighth Amendment deliberate
13 indifference to serious dental needs, will proceed against Defendants C/O Nunez, Jhon
14 Doe #1, and Jane Doe #2 (when Plaintiff learns their identities). However, Defendant Jane
15 Doe #1 is dismissed without prejudice from this claim.

16 It is further ordered that Defendants C/O Davis, C/O Hunter, Sgt. Thomas, and Lt.
17 Jhon Doe #2 are dismissed with prejudice as amendment would be futile.

18 It is further ordered that, given the nature of the claims that the Court has permitted
19 to proceed, this action is stayed for 90 days to allow Plaintiff and Defendants an
20 opportunity to settle their dispute before the \$350.00 filing fee is paid, an answer is filed,
21 or the discovery process begins. During this 90-day stay period and until the Court lifts
22 the stay, no other pleadings or papers may be filed in this case, and the parties may not
23 engage in any discovery, nor are the parties required to respond to any paper filed in
24 violation of the stay unless specifically ordered by the court to do so. The Court will refer
25 this case to the Court's Inmate Early Mediation Program, and the Court will enter a
26 subsequent order. Regardless, on or before 90 days from the date this order is entered,
27 the Office of the Attorney General must file the report form attached to this order regarding
28 the results of the 90-day stay, even if a stipulation for dismissal is entered prior to the end

1 of the 90-day stay. If the parties proceed with this action, the Court will then issue an
2 order setting a date for Defendants to file an answer or other response. Following the
3 filing of an answer, the Court will issue a scheduling order setting discovery and
4 dispositive motion deadlines.

5 It is further ordered that “settlement” may or may not include payment of money
6 damages. It also may or may not include an agreement to resolve Plaintiff’s issues
7 differently. A compromise agreement is one in which neither party is completely satisfied
8 with the result, but both have given something up and both have obtained something in
9 return.

10 It is further ordered that if the case does not settle, Plaintiff will be required to pay
11 the full \$350.00 filing fee. This fee cannot be waived. If Plaintiff is allowed to proceed *in*
12 *forma pauperis*, the fee will be paid in installments from his prison trust account. See 28
13 U.S.C. § 1915(b). If Plaintiff is not allowed to proceed *in forma pauperis*, the \$350.00 will
14 be due immediately.

15 It is further ordered that if any party seeks to have this case excluded from the
16 inmate mediation program, that party must file a “motion to exclude case from mediation”
17 on or before 21 days from the date of this order. The responding party will have seven
18 days to file a response. No reply may be filed. Thereafter, the Court will issue an order,
19 set the matter for hearing, or both.

20 The Clerk of Court is directed to electronically serve a copy of this order, and a
21 copy of Plaintiff’s Complaint (ECF No. 1-1), on the Office of the Attorney General of the
22 State of Nevada, by adding the Attorney General of the State of Nevada to the docket
23 sheet. This does not indicate acceptance of service.

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1 It is further ordered that the Attorney General's Office must advise the Court within
2 21 days of the date of the entry of this order whether it will enter a limited notice of
3 appearance on behalf of Defendants for the purpose of settlement. No defenses or
4 objections, including lack of service, will be waived as a result of the filing of the limited
5 notice of appearance.

6 DATED THIS 2nd Day of February 2021.

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MIRANDA M. DU
10 CHIEF UNITED STATES DISTRICT JUDGE
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3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA
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6 PEDRO GARCIA,

7 Plaintiff,

8 v.

9 C/O DAVIS, *et al.*,

10 Defendants.

Case No. 3:20-cv-0071-MMD-CLB
REPORT OF ATTORNEY GENERAL
RE: RESULTS OF 90-DAY STAY

11 **NOTE: ONLY THE OFFICE OF THE ATTORNEY GENERAL WILL FILE THIS FORM.**
12 **THE INMATE PLAINTIFF MAY NOT FILE THIS FORM.**

13 On _____ [*the date of the issuance of the screening order*], the Court
14 issued its screening order stating that it had conducted its screening pursuant to 28 U.S.C.
15 § 1915A, and that certain specified claims in this case would proceed. The Court ordered
16 the Office of the Attorney General of the State of Nevada to file a report 90 days after the
17 date of the entry of the Court's screening order to indicate the status of the case at the
18 end of the 90-day stay. By filing this form, the Office of the Attorney General hereby
19 complies.

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REPORT FORM

[Identify which of the following two situations (identified in bold type) describes the case, and follow the instructions corresponding to the proper statement.]

Situation One: Mediated Case: The case was assigned to mediation by a court-appointed mediator during the 90-day stay. [If this statement is accurate, check **ONE** of the six statements below and fill in any additional information as required, then proceed to the signature block.]

_____ A mediation session with a court-appointed mediator was held on _____ [enter date], and as of this date, the parties have reached a settlement *(even if paperwork to memorialize the settlement remains to be completed)*. *(If this box is checked, the parties are on notice that they must SEPARATELY file either a contemporaneous stipulation of dismissal or a motion requesting that the Court continue the stay in the case until a specified date upon which they will file a stipulation of dismissal.)*

_____ A mediation session with a court-appointed mediator was held on _____ [enter date], and as of this date, the parties have not reached a settlement. The Office of the Attorney General therefore informs the Court of its intent to proceed with this action.

_____ No mediation session with a court-appointed mediator was held during the 90-day stay, but the parties have nevertheless settled the case. *(If this box is checked, the parties are on notice that they must SEPARATELY file a contemporaneous stipulation of dismissal or a motion requesting that the Court continue the stay in this case until a specified date upon which they will file a stipulation of dismissal.)*

_____ No mediation session with a court-appointed mediator was held during the 90-day stay, but one is currently scheduled for _____ [enter date].

_____ No mediation session with a court-appointed mediator was held during the 90-day stay, and as of this date, no date certain has been scheduled for such a session.

_____ None of the above five statements describes the status of this case. Contemporaneously with the filing of this report, the Office of the Attorney General of the State of Nevada is filing a separate document detailing the status of this case.

* * * * *

Situation Two: Informal Settlement Discussions Case: The case was NOT assigned to mediation with a court-appointed mediator during the 90-day stay; rather, the parties were encouraged to engage in informal settlement negotiations. [If this statement is accurate, check **ONE** of the four statements below and fill in any additional information as required, then proceed to the signature block.]

_____ The parties engaged in settlement discussions and as of this date, the parties have reached a settlement *(even if the paperwork to memorialize the settlement remains to be completed)*. *(If this box is checked, the parties are on notice that they must SEPARATELY file either a contemporaneous stipulation of*

1 *dismissal or a motion requesting that the Court continue the stay in this case until*
2 *a specified date upon which they will file a stipulation of dismissal.)*

3 _____ The parties engaged in settlement discussions and as of this date, the
4 parties have not reached a settlement. The Office of the Attorney General therefore
5 informs the Court of its intent to proceed with this action.

6 _____ The parties have not engaged in settlement discussions and as of this date,
7 the parties have not reached a settlement. The Office of the Attorney General
8 therefore informs the Court of its intent to proceed with this action.

9 _____ None of the above three statements fully describes the status of this case.
10 Contemporaneously with the filing of this report, the Office of the Attorney General
11 of the State of Nevada is filing a separate document detailing the status of this
12 case.

13 Submitted this _____ day of _____, _____ by:

14 Attorney Name: _____

15 Print

16 Signature

17 Address: _____

18 Phone: _____

19 Email: _____